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The Case Against the Gun Industry

MORE THAN TWO YEARS AGO, NEW ORLEANS BECAME THE FIRST CITY in the nation to file suit against the gun industry. Shortly thereafter, the city of Chicago and Cook County followed with a second lawsuit. The lawsuits struck an immediate chord with municipal and county officials across the United States, who have been facing widespread gun violence in their communities for years. Since New Orleans's filing, 31 additional cities and counties and one state have filed suit against gun manufacturers, dealers, and trade associations, with still more lawsuits under consideration. (See "Status of City, County, and State Gun Cases," page 416.)

The gun lawsuits build on the lessons learned from litigation against the tobacco industry. For decades, the tobacco industry concealed its role in creating the massive harm caused by its products, so the public tended to see tobacco-related disease as the result of a choice made by the smoker, with little relation to the industry's conduct. The wave of state and city lawsuits against tobacco companies changed that perception by uncovering the tobacco industry's wrongdoing.¹ The public now understands that the tobacco industry chose to design and market its products in certain ways—by manipulating nicotine levels, by marketing to children, by suppressing research findings, and by lying about product dangers—that fueled a public health crisis of huge proportions. Litigation forced tobacco companies to the bargaining table, where they finally acknowledged responsibility for the harm they had caused and agreed to pay unprecedented damages to state and city governments.

The public entity gun lawsuits are exposing gun industry misconduct in the same way. Guns cause immense harm in America. Roughly 30,000 people are killed each year with firearms, making them second only to motor vehicles as the most frequent cause of injury death in the United States.² In 1997, 64,000 people were treated in hospital emergency rooms for *nonfatal* firearm injuries.³ As in the case of the tobacco industry, much of this staggering harm stems from gun industry wrongdoing in the way it designs, distributes, and markets its products. By bringing suit, cities, counties, and states can change the way the gun industry conducts itself, and thereby save lives.

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FORCING SAFER GUN DESIGNS

Widespread firearm misuse by unauthorized users is a serious, but preventable problem. For example, approximately one child is killed, and roughly 13 more are injured, in unintentional shootings each day.^{4,5} An all-too-common scenario is a curious child or teen coming across a loaded gun in their own or a friend's home and handling it as if it were unloaded, pulling the trigger and killing or injuring another child.^{6,7} The National Institute of Justice, a branch of the Justice Department, has estimated that 34% of handgun owners keep their guns loaded and unlocked.⁸ Further, a 1991 General Accounting Office study found that nearly a third of unintentional firearm deaths occurred either because a very young child was able to fire the weapon or because the person firing the gun was unaware it was loaded.⁹

Another dimension of the problem is suicides with firearms among 10- to 19-year-olds, which claimed the lives of three to four young people a day in 1997.¹⁰ From 1970 to 1990, suicide rates among 10- to 19-year-olds nearly doubled, with the higher rate attributed not to an overall increase in attempts, but to an increase in firearm-related attempts,^{11,12} which are much more lethal than suicide attempts by other means.^{13,14}

The gun industry has consistently tried to ignore this mounting toll of deaths and injuries, and has falsely contended that there is nothing it can do to prevent these tragedies. Yet one way to dramatically reduce unintentional shootings and teen gun suicides is to design handguns, like automobiles, to be inaccessible to or safe for young people—by building safety devices and locks into them.^{15,16} Although it is critical that parents properly secure firearms kept in the home and that all gun owners receive training and education, many injury control experts say that changing the design of a product is the most effective way to reduce injury.¹⁵

The use of firearm safety devices to prevent accidental shootings is not new. As early as 1884, Smith & Wesson sold a handgun that utilized a type of grip safety nicknamed a "lemon squeezer," which was designed not to be fireable by children younger than age nine.¹⁷ Smith & Wesson sold 500,000 of the firearms before discontinuing the design in 1940. In 1912, magazine-disconnect safeties were patented to prevent shootings that commonly occur after a person has removed a pistol's ammunition magazine thinking he or she has unloaded the gun.¹⁸ A bullet is often left hidden in the chamber, with tragic results. This simple device costs less than 50 cents to install, yet the gun industry puts them on only a few

pistols. Various types of indicators alerting a user to a bullet hidden in a pistol's chamber have also been devised over the decades. The General Accounting Office and others have concluded that the use of even these simple safeties or load indicators on all firearms could save hundreds of lives each year and stop thousands of nonfatal unintentional shootings.⁹

For more than two decades, gun manufacturers have also had the ability to "personalize" guns by designing them to be self-locking, utilizing various types of key or combination devices that prevent guns from being fired when locked. One simple design uses a push-button lock in the handle of the firearm very much like the combination lock on a briefcase.¹⁶ The device is secure when locked, but can be unlocked almost instantly by a person knowing the combination, even in the dark. Many police departments are using these products on department handguns, and the state of Maryland has passed legislation requiring this kind of internal lock for all handguns made or sold in the state by the year 2002. This kind of device can also be designed to lock itself so that, like airbags in cars, it can save a life even if the owner forgets to engage it.

Companies outside the gun industry have also begun using electronic technologies to personalize firearms. One company has incorporated fingerprint-recognition technology into handguns to truly link a firearm to the authorized user. In 1996, Colt's Manufacturing Company unveiled a prototype handgun, made by an outside vendor

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under a federal grant, that uses radio frequency tags to prevent the gun from firing unless the user is wearing a tag emitting a signal matching the one imbedded in the gun.¹⁵

Personalized gun technology could prevent even more shootings than simple safeties, including murders or assaults committed with stolen guns and most teen suicides.

Roughly 500,000 guns are stolen each year in the United States, many of which are used to commit violent crimes.¹⁹ For example, school shootings in Jonesboro, Arkansas, and Springfield, Oregon, and the 1998 murder of two police officers at the US Capitol, were committed with stolen guns wielded by unauthorized users. An informal study by the Center to Prevent Handgun Violence that looked at both intentional and unintentional shootings found that *more than half* could have been prevented if this technology had been used.⁶

Despite the life-saving value of safer gun design, only one major gun company executive—former CEO and President of Colt's Manufacturing Ron Stewart—has called on the industry to fund a research and development program to advance personalized gun technology. Unfortunately, Mr. Stewart's view has not been shared by other industry executives, including his successors at Colt's Manufacturing. Industry spokespeople continue to claim that personalized gun technology is still years away, that their current firearm designs are completely safe, and that everyone other than the industry is to blame for gun violence. Yet, a first crack in the industry's stonewalling came



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in October 1997, when most major handgun manufacturers agreed to voluntarily offer child safety locks for sale with new handguns, marking the first time the industry acknowledged there was something it could do to help save lives. However, the switch was motivated not to protect the safety of citizens but to stave off more restrictive legislation being considered by Congress as well as to help the industry in future litigation.²⁰ Under the pressure of the city, county, and state lawsuits, that initial crack has begun to expand, with some gun companies starting to make limited investments in personalized gun technologies. Even so, the industry continues to offer up dozens of new, more lethal, firearm designs each year without regard for safety.²¹

A responsible industry, when faced with overwhelming data on injuries and deaths caused by its products, would not only change product design on items yet to be sold but would *recall* and retrofit products already in consumers' hands. However, there has been no pressure from the government for the gun industry to make changes in its product designs because it was given a unique exemption from federal safety regulations at the time the Consumer Product Safety Act was passed. The city, county, and state lawsuits have the ability to apply the missing pressure.

CURBING RECKLESS GUN DISTRIBUTION

The lawsuits allege that the gun industry facilitates illegal gun trafficking. To sell more guns and make higher profits, the industry has established a "willfully blind" distribution system, which ultimately funnels hundreds of thousands of guns from the legal marketplace into criminals' and juveniles' hands.

Firearms are distributed through a *primary* market, consisting of all transactions involving the licensed gun industry, and a *secondary* market, in which both buyers and sellers are unlicensed.^{22,23} In the primary market, the three layers of sellers—manufacturers, distributors, and dealers—are all federally licensed and must comply with certain limited paperwork requirements, including record keeping and background checks. Once an individual buys a firearm, however, there is little or no federal regulation



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placed on reselling that weapon in the secondary market.

Gun manufacturers know that the system can be readily subverted by firearms dealers willing to look the other way when people with clean criminal records buy guns on behalf of others who are disqualified. Law enforcement's ability to curb these illegal sales is constrained by limits on the number of federal investigators overseeing the industry's sales in the primary market; congressional restrictions on computerizing records; and broad legal loopholes that make trafficking convictions difficult to secure. These constraints are the result of heavy lobbying by the gun industry and the National Rifle Association.

According to the US Bureau of Alcohol, Tobacco and Firearms (ATF), "[v]irtually all new firearms used in crime first pass through the legitimate distribution system of federally licensed firearms dealers,"²⁴ and a substantial portion of handguns sold through this legal marketplace ends up being used in crime.²⁴⁻²⁶

Sales to "straw purchasers" are a leading source of firearm diversions. Indeed, one major federal study of gun trafficking found that straw purchasing accounted for almost 50% of the firearms trafficked into crime.²⁷ Multiple sale schemes involving hundreds, or even thousands, of straw-purchased guns have also been well documented.^{24,25} Evidence suggests that, among guns found at crime scenes, straw-purchased guns are twice as likely as other guns to be found in a state other than where they were bought, indicating their important role in interstate trafficking.²⁸

Corrupt firearms dealers are also a significant part of the problem. Undercover sting operations in Chicago, Detroit, and Gary, Indiana, have proved that dealers are loath to turn away paying customers, even if they openly admit to being criminals or juveniles. Chicago launched an extensive undercover investigation in 1998. Over a three-month period, the Chicago Police Department sent two-person teams into the 12 gun stores ringing the city that had sold the highest numbers of guns traced to crimes within the city. Both agents carried identification indicating that they lived in Chicago, where it has been illegal to own handguns since 1982. Only one of the agents carried a firearm owner identification card, which is required under Illinois law to purchase a firearm in the state. The agent who did *not* have the required card nevertheless did the talking, placed the cash on the counter, and walked out with the gun. The agents also openly bragged about needing the gun to “settle a score,” to resell to drug gangs, or to use in other criminal enterprises, yet in each case the suburban dealer sold the firearm. Some dealers even counseled the agents in how to avoid federal paperwork that might trigger an investigation. The dealers approached in Michigan and Indiana engaged in similar misconduct even after the Chicago sting was aired nationally on *60 Minutes*. One Michigan dealer was captured on videotape saying, “It’s highly illegal,” yet went

ahead and made the sale. Some dealers have pumped literally thousands of guns into the illegal market.^{29,30}

The industry takes advantage of weaknesses in the law to market guns to criminals and juveniles. For example, evidence presented in a case in New York suggests that the industry deliberately targets areas with lax gun control laws, knowing that guns purchased there will be trafficked into states and cities with tougher gun laws.³¹ A sworn affidavit issued by a former Senior Vice-President of Marketing and Sales at Smith & Wesson in this case admitted the industry’s complicity:

The company and the industry as a whole are fully aware of the extent of the criminal misuse of firearms. The company and the industry are also aware that the black market in firearms is not simply the result of stolen guns but is due to the seepage of guns into the illicit market from multiple thousands of unsupervised federal firearms licensees. In spite of their knowledge, however, the industry’s position has consistently been to take no independent action to insure responsible distribution practices.³²

If the gun industry exercised control over its distribution network, firearms trafficking could be dramatically reduced. A system of training, monitoring, and disciplin-



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ing dealers could be instituted, much in the way that certain businesses require dealers to be “authorized” before being able to sell the manufacturer’s product line. Other industries selling products for which the danger of misuse is high have instituted marketing controls, including franchising retail sales outlets, restricting retail sales through distribution contracts, and requiring safe sales practices at the retail level.³³

This point was recently underscored by leading gun maker Smith & Wesson, which last year started requiring gun dealers stocking its products to sign a new “Code of Responsible Business Practices” or be cut off. Unfortunately, the Code is very weak, merely requiring dealers to maintain store premises, to not “knowingly” sell firearms to straw purchasers or otherwise violate the law, and to comply with other minimal provisions. Smith & Wesson has the right under the Code to terminate dealers who have been sued by municipalities for negligent distribution practices.

Subsequent to issuing this weak Code, Smith & Wesson reached an historic settlement agreement in March 2000 with the Department of Housing and Urban Development, two state Attorneys General, and a number of the cities that had sued the company, which required Smith & Wesson to initiate more dramatic changes in the way it marketed guns. The agreement requires the gun maker to sell guns only through “authorized” distributors and dealers, who in turn must sign on to stringent terms to become authorized, including independent monitoring of their ongoing compliance with the agreement. The agreement also commits Smith & Wesson to making significant improvements in gun safety. (See “Smith & Wesson Settlement,” page 417.)

By signing this agreement, Smith & Wesson stands alone in



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acknowledging that the gun industry could take steps to prevent the diversion of guns to the criminal marketplace. The rest of the industry pretends that it does not know, and cannot control, where its guns end up. The gun industry apparently takes this “see no evil” approach regarding the funneling of guns to crime because it reaps huge profits on guns channeled to criminals through its legal but lax distribution system. Moreover, by selling guns through middlemen distributors and dealers over whom the industry scrupulously avoids control, manufacturers seek to insulate themselves from liability.

For more than two decades, manufacturers have been able to design guns to be self-locking—for example, using a push-button lock much like the combination lock on a briefcase.

The city, county, and state lawsuits attack this misconduct head on by complaining that the industry’s willfully blind distribution system has created public nuisances in these communities, and several courts have allowed these cases to proceed toward trial. The suits build on a legal victory secured in 1999 in which a Brooklyn jury concluded that 15 major gun manufacturers negligently distributed firearms.³⁴ The court upheld the jury verdict, finding that gun manufacturers had a duty to distribute firearms responsibly and could control their distribution network. Their failure to do

so caused firearms to fall into the wrong hands, where they would foreseeably be used in crime.

CHALLENGING DECEPTIVE ADVERTISING

Gun manufacturers have also acted irresponsibly in marketing guns as a way to increase the safety of gun owners and their families, when empirical research has demonstrated that just the opposite is true.³⁵⁻³⁷ One major case study shows that a gun in the home is four times as likely to be involved in a fatal or non-fatal unintentional shooting as it is to be used to injure or kill in self-defense, seven times as likely to be involved in a criminal assault or homicide, and 11 times as likely to be involved in a suicide attempt.³⁷ Despite these findings, the gun industry has circulated numerous advertisements, often depicting mothers and young children, urging homeowners to purchase handguns for home protection.^{38,39}

In 1996, the Center to Prevent Handgun Violence, joined by numerous public health organizations and 75 noted public health researchers, filed a petition with the Federal Trade Commission challenging the industry's adver-

The industry has established a “willfully” blind distribution system, which funnels hundreds of thousands of guns from the legal marketplace into the hands of criminals and young people.

tising as unfair and deceptive.⁴⁰ Numerous cities and counties have also attacked this problem in their lawsuits, alleging that the industry's misconduct has caused preventable local shootings to which the city or county must respond.

BLOCKING ASSAULT WEAPONS

Litigation has already demonstrated that the gun industry markets high-firepower assault weapons that have no legitimate sporting or self-defense use but are perfectly suited for criminals. The Center's Legal Action Project, with which the present author is affiliated, has brought lawsuits against gun manufacturers for negligent marketing of these

weapons of mass destruction. One of the most significant of these cases, *Merrill v. Navegar*,⁴¹ led to the first appellate decision in the US holding that a gun manufacturer could be liable for negligence leading to violence. That decision is now on appeal in the California Supreme Court.

The *Merrill* lawsuit stemmed from a July 1993 rampage by a man armed with two TEC-9 assault pistols and hundreds of rounds of ammunition that enabled him to kill eight people and injure six others in a San Francisco office building in a matter of minutes. The lawsuit alleged that because Navegar designed the TEC-9 for mass destruction, it was negligent to sell this assault pistol to the general public, as it was foreseeable that the guns would enable a criminal to carry out such a mass assault. Considerable evidence obtained through discovery helped prove this allegation, and showed how consciously the company had targeted the criminal market, including advertising its gun as having “an excellent resistance to fingerprints.”⁴¹

THE PATH TO REFORM

Although firearm injuries and deaths obviously impact the victims and their families the hardest, gun violence also creates significant problems and costs for public authorities responsible for protecting public welfare and keeping society safe. Cities, counties, and states have been stuck with billions of dollars in costs directly resulting from gun violence. These costs include outlays for injuries to public

STATUS OF CITY, COUNTY, AND STATE GUN CASES

To date, 32 cities and counties and one state have filed lawsuits against the gun industry. In order of filing, they are: New Orleans, LA; Chicago and Cook County, IL; Miami-Dade County, FL; Bridgeport, CT; Atlanta, GA; Cleveland, OH; Wayne County and Detroit, MI; Cincinnati, OH; St. Louis, MO; Alameda County, Berkeley, Sacramento, San Francisco, and San Mateo County, CA; Compton, Los Angeles, and West Hollywood, CA; Camden County, NJ; Boston, MA; Newark, NJ; Camden, NJ; East Palo Alto, Englewood, and Oakland, CA; Los Angeles County, CA; Gary, IN; Wilmington, DE; Washington DC; Philadelphia, PA; New York City; and New York State.

property, medical care, police investigations, emergency rescue services, coroner services, jails and prisons, security at schools and other public buildings, funeral services for unknown victims, disability benefits, and youth intervention programs. In addition, there are numerous indirect costs, including lost tax revenues from declining real estate values in neighborhoods beset by gun violence.

Several recent studies have attempted to estimate the total public costs associated with firearm-related injuries. The studies have arrived at the same conclusion: the costs are exceptionally high for the taxpaying public.^{42,43} For example, the *Los Angeles Times* did a report on the public costs stemming from the experience of one teenager, now a paraplegic as a result of a gunshot wound, estimating a total public cost of more than a million dollars for a single shooting victim.⁴⁴ Given that gun violence disproportionately affects the poor and that gunshot victims typically do not have health insurance,^{45,46} firearm injuries clearly place an enormous financial burden on the public each year.

By pressing for recovery of at least some of these costs, lawsuits against the gun industry can bring about significant reforms, as the settlement agreement with Smith & Wesson has shown. Forcing the industry to incorporate feasible safety devices in all guns—especially locking technology to prevent unauthorized access and misuse—could prevent thousands of injuries and deaths, most importantly among children. Similar effects would likely flow once the gun industry stops duping the public into believing that guns increase home security, when empirical data prove that the opposite is true. Finally, the greatest benefits may come from making the industry tighten controls over its lax distribution network, thereby choking off the major gun pipeline for criminals, juveniles, and other inappropriate gun users. These are laudable goals, and the cities and counties that have filed suit to bring about these reforms deserve to be commended.

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SMITH & WESSON SETTLEMENT

On March 17, 2000, Smith & Wesson became the first gun manufacturer to sign an agreement to settle some city and county lawsuits that requires dramatic changes in the way it designs, markets, and distributes guns.

The agreement requires Smith & Wesson to sell its guns only through *authorized* dealers and distributors, who must abide by a strict set of terms and conditions, including:

- A dealer/distributor may not sell at a gun show unless background checks are conducted on all sales at the show, and sales are not made until the check is completed.
- Dealers/distributors must require customers to have passed a certified firearms safety course or exam.
- Annual training and testing is required on how to recognize suspect sales and how to promote safe use and storage.
- Any dealer that sells a disproportionate number of guns traced to crime will have supplies cut off.
- Security to prevent gun theft must meet minimum standards.
- Dealers cannot sell more than one handgun to the same person in less than 14 days.

- Weapons and gun features attractive to criminals, such as semi-automatic assault weapons or large-capacity magazines, cannot be sold, nor can guns that do not meet the design criteria in the agreement.

The agreement also requires Smith & Wesson to implement safer gun designs and warnings, including:

- Installing internal locking devices on all guns within two years.
- Developing personalized technology as part of all new gun designs within three years.
- Spending 2% of revenues on developing personalized technology.
- Installing child safeties and load indicators, and a second, hidden serial number on all guns.
- Distributing stringent safety warnings to buyers about the danger of improper handling and storage.

The agreement also provides for direct oversight by the cities and counties that have brought suit to ensure that its provisions are complied with.

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